

**DISTRICT OF COLUMBIA**  
**DOH Office of Adjudication and Hearings**  
825 North Capitol Street N.E., Suite 5100  
Washington D.C. 20002

DISTRICT OF COLUMBIA  
DEPARTMENT OF HEALTH  
Petitioner,

v.

LUO L. LIN and YUK S. LIN  
Respondents

Case No.: I-00-70185

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**FINAL ORDER**

**I. Introduction**

On October 9, 2001, the Government served a Notice of Infraction upon Respondents Luo L. Lin and Yuk S. Lin, alleging that they violated 21 DCMR 700.3, which requires property owners to containerize solid wastes properly. The Notice of Infraction alleged that the violation occurred on October 5, 2001 at 2479 18<sup>th</sup> Street, N.W., and sought a fine of \$1,000.

Respondents did not file an answer to the Notice of Infraction within the required twenty days after service (fifteen days plus five additional days for service by mail pursuant to D.C. Official Code § 2-1802.05). Accordingly, on November 19, 2001, this administrative court issued an order finding Respondents in default, assessing the statutory penalty of \$1,000 required by D.C. Official Code § 2-1801.04 (a)(2)(A) and requiring the Government to serve a second Notice of Infraction pursuant to D.C. Official Code § 2-1802.02(f).

Before the Government served the second Notice of Infraction, Respondents filed an untimely plea of Deny. I then issued an order setting a hearing on January 16, 2002. All parties

appeared on that date. Gerard Brown, the inspector who issued the Notice of Infraction, represented the Government and Respondents appeared on their own behalf.

Based upon the testimony of the witnesses, my evaluation of their credibility and the documents introduced into evidence, I now make the following findings of fact and conclusions of law.

## **II. Findings of Fact**

Respondents own a restaurant at 2479 18<sup>th</sup> Street, N.W. On the morning of October 5, 2001, Mr. Brown observed the dumpster behind the restaurant. Its covers were open and it was overflowing with trash. Most of the trash was in plastic bags, and the food wastes inside were easily accessible to rats, which could rip the bags open. Because the dumpster was near the restaurant's rear wall, it was easy for rats to climb into it in search of food.

Mr. Lin testified credibly that the restaurant staff usually makes sure that the dumpster's covers are closed, but that homeless people often rummage through the dumpster in search of food after the restaurant closes. When they do so, they often do not make any effort to replace the trash bags into the dumpster and often leave the dumpster uncovered. The situation has been occurring for several years. Mr. Lin admitted that it would be feasible to lock the dumpster at night to prevent the problem.

When he received the Notice of Infraction, Mr. Lin intended to plead Deny. He checked the appropriate box on the Notice of Infraction form, but mailed it to 51 N Street, N.E., the address of the Bureau of Rodent Control. This was the return address on the envelope in which the Notice of Infraction was mailed to him. The Notice of Infraction form, however, clearly instructs all Respondents to mail their answers to the Office of Adjudication and Hearings at 825

North Capitol Street, N.E. When Mr. Lin received the order of November 19 concerning Respondents' failure to file a response, he promptly filed an answer in the proper location.

### **III. Conclusions of Law**

The rule at issue provides:

All solid wastes shall be stored and containerized for collection in a manner that will not provide food, harborage, or breeding places for insects or rodents, or create a nuisance or fire hazard.

21 DCMR 700.3.

The storage of waste at Respondents' building on October 5, 2001 violated § 700.3 because rats easily could obtain food by ripping open the plastic bags in the uncovered dumpster. Respondents' efforts to shift the blame to homeless persons rummaging through the trash after the restaurant closed is unavailing. Section 700.3 is an important public health measure, intended to aid in the reduction of the serious rat problem in this City. A property owner is in the best position to undertake reasonable precautions to ensure that its trash does not become a food source for rats. The conditions found by Mr. Brown on October 5 were, by Respondents' own admission, both foreseeable and easily preventable and there is no basis for excusing the violation.<sup>1</sup>

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<sup>1</sup> It may well be that § 703.1 imposes strict liability for improper waste storage upon a property owner even if the owner takes all reasonable precautions against foreseeable events that could lead to improper storage of its wastes. *See Bruno v. District of Columbia Board of Appeals and Review*, 665 A.2d 202, 204 (D.C. 1995). It is not necessary to decide that issue in this case, however.

The Rodent Control Act of 2000 classified a violation of § 700.3 as a Class 1 infraction, which is punishable by a fine of \$1,000 for a first offense.<sup>2</sup> 16 DCMR 3201. A \$1,000 fine, therefore, will be imposed.

The Civil Infractions Act, D.C. Code Official Code §§ 2-1802.02(f) and 2-1802.05, requires the recipient of a Notice of Infraction to demonstrate “good cause” for failing to answer it within twenty days of the date of service by mail. If a party can not make such a showing, the statute requires that a penalty equal to the amount of the proposed fine must be imposed. D.C. Official Code §§ 2-1801.04(a)(2)(A) and 2-1802.02(f). Respondents did not file a timely answer because they did not follow the instructions on the Notice of Infraction form and mailed their answer to the wrong place. Ignoring clear instructions on an important legal form does not constitute good cause. *DOH v. DRM & Associates*, OAH No. I-00-40309 at 14 (Final Order, January 24, 2002). Thus, there is no basis for suspending the statutorily-imposed penalty of \$1,000 for failing to file a timely answer.

#### IV. Order

Based upon the foregoing findings of fact and conclusions of law, it is, this \_\_\_\_\_ day of \_\_\_\_\_, 2002:

**ORDERED**, that Respondents, who are jointly and severally liable, shall pay a total of **TWO THOUSAND DOLLARS (\$2,000)** in accordance with the attached instructions within twenty (20) calendar days of the date of service of this Order (15 days plus 5 days service time pursuant to D.C. Official Code §§ 2-1802.04 and 2-1802.05); and it is further

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<sup>2</sup> The Rodent Control Act of 2000 is Title IX of the Fiscal Year 2001 Budget Support Act of 2000, effective October 19, 2000, D.C. Law 13-172. See 47 D.C. Reg. 8692 (November 10, 2000); 47 D.C. Reg. 6308 (August 11, 2000). Section 910(b) of that Act established new fines for violations of various rodent control measures, including § 700.3. 47 D.C. Reg. at 6339 (August 11, 2000).

**ORDERED**, that if the Respondents fail to pay the above amount in full within twenty (20) calendar days of the date of mailing of this Order, interest shall accrue on the unpaid amount at the rate of 1 ½% per month or portion thereof, starting from the date of this Order, pursuant to D.C. Official Code § 2-1802.03 (i)(1); and it is further

**ORDERED**, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondents' licenses or permits pursuant to D.C. Official Code § 2-1802.03 (f), the placement of a lien on real and personal property owned by Respondents pursuant to D.C. Official Code § 2-1802.03 (i), and the sealing of Respondents' business premises or work sites pursuant to D.C. Official Code § 2-1801.03 (b)(7).

/s/      **1/29/02**

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John P. Dean  
Administrative Judge